Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

MICHAEL E. GRZELAK, Petitioner

vs.

U.S. POSTAL SERVICE DESIGNEE, Respondent

ON APPEAL FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Michael E. Grzelak, pro se
6340 Spoonbill Drive
New Port Richey, FL 34652

31 pp

In this open letter which I hope will be read by someone, we'll dispense with formalities. In it I will show events, situations that have happened. First of all I still have not been paid by the defendant. I took the P.O. to small claims Court and tried to resolve it. The offered $40.00 to settle I refused then they offered $64.00, I refused. All this can be proven by the court referee. Rather than settle the P.O. shifted the case to Federal Court. The defendant knew they were safe on their home grounds, I say amazing. After many difficulties they finally agreed to a meeting which ~~way~~ was in a telephone conversation. The Attorney General that spoke to me offered the original $128.75, but it was beyond that point. For they are the ones that exploited this case. It is obvious that my case was never resolved. Anyway both sides signed an agreement to have a mediator whose name was Mark Shelton who would settled the issue, also there was a hearing date issued and a trial date by the judge.

The courts keep ignoring the fact that in my complaint, the defendant was going to have me arrested for doing my job. There are over twenty eye witnesses, plus the police to prove all this. There is plenty of evidence of what happened. So why do the Judges keep ignoring the truth. All of a sudden the Judge decides to cancel the agreement. The hearing date, and the trial date. That's not fair, it's not right. I appealed it. Also, at that time, I could not get any help. So I asked for counsel. Now hear this the same judge that quashed me got to rule on my motion for counsel. After quashing me, that man could be a fool to help me. His answer was that there were not that many lawyers available. What a laugh, the defendant had about at least eight lawyers after me question: isn't all this a conflict of interest. I appealed to Georgia Appeals. The judge turned me down. Still ignoring the issue of the

incident that I was going to be arrested for doing my job. Even though there are over twenty eye witnesses and the New Port Richey Police Dept. involved and all kinds of evidence. The Judges told me I could appeal, I send in my appeal. This time the Judges refused to look at my appeal. Their excuses, have no time, can't find anybody, too busy, etc. Judges I have to get this off my chest, it all pertains to may case and these judges. Please follow. Among other confrontations this one stand out the most. We go back to June 29, 1944. I was a member of the 330th Inf. Regt. 83rd Division. We were advancing toward St. Lo, prior to that we hit a town called Carentan, where all hell broke loose, the enemy leveled 88's at us and blew ~~mot~~ MOST of us apart. Most of our boys were naive depression ~~drafters~~ DRAFTEES, bunch of young kids, which I was also. We could not tell the Krauts hey don't bother us we haven't any time, we're too busy; as these judges told me. Now you tell me Judges why are all those young naive depression drafters lying in grave yards all over Normandy. We were Railroaded then and now I's still being railroaded. I never got to St. Lo, I was shot up in Carentan. I spent some time in hospitals in England. Then I was sent back to France. Imagine all these Judges and Lawyers ganging up on me. What a bunch of heroes.

I'll say it again, the defendant made an agreement with me. They have not paid me. They exploited it. I could prove it. They know I could prove it. They will not let me prove it.

I may have lost, but I went down swinging - perhaps Judge Rhenquist might be willing to help.

I thank anyone for reading this. God Bless.

Respectfully,

Michael A. Grzelak

QUESTION PRESENTED

Whether the Circuit Court of Appeals' decision to affirm the entry of a summary judgment against the Petitioner was improper and in conflict with decisions of this Court and other Circuit Courts in light of the pleadings and documents presented by the Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

MICHAEL E. GRZELAK, Petitioner

vs.

U.S. POSTAL SERVICE DESIGNEE, Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

The Petitioner, MICHAEL E. GRZELAK, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals (App. Infra. 1)is unreported. The opinion of the district court (App. Infra. 2) is unreported.

JURISDICTION

The court of appeals entered its judgment of August 11, 1997. The order on Petitioner's Petition for Rehearing and/or Suggestion of En Banc Consideration was entered on November 3, 1997. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254 (1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. Section 2679(d)(2)

28 U.S.C. Section 1446(b)

Rule 56(c), Fed. R. Civ. P.

STATEMENT

On August 26, 1994, the Petitioner, MICHAEL E. GRZELAK, filed suit in Pasco County, Florida, against the Respondent, U.S. POSTAL SERVICE DESIGNEE, for the reimbursement of "back pay" owed to the Petitioner by the Respondent. The

Respondent removed the case to the Middle District Court in Tampa, Florida.

On December 26, 1995, the Petitioner filed an Amended Complaint.

On May 2, 1994, the United States District Court Judge entered an Order setting the case for Pretrial and Trial.

On March 29, 1996, the Honorable Steven D. Merryday, United States District Court Judge, entered an Order granting the Motion for Summary Judgment.

On April 11, 1997, the Circuit Court of Appeals entered a Judgment affirming the Order on Motion for Summary Judgment.

On September 22, 1997, the Petitioner filed a Petition for Rehearing and/or Suggestion of En Banc Consideration.

BASIS FOR FEDERAL JURISDICTION

The Respondent, U.S. POSTAL SERVICE DESIGNEE, filed a Notice of Removal in the

County Court of Pasco County, Florida alleging that pursuant to 28 U.S.C. Section 2679(d)(2) and 28 U.S.C. Section 1446(b), the alleged employment action against the United States Postal Service Designee is proper only in Federal Court.

ARGUMENT

Pursuant to Rule 56(c), Federal Rules of Civil Procedure,

> The judgment sought shall be rendered forthwith if the pleadings, deposition, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

It has been a well established rule in this court that, initially, the parties seeking summary judgment bears the burden of showing the court by reference the supporting materials in the file that there are no genuine issues of material fact more appropriately decidedly at trial. Celotex Corp. v. Catrett, 477 U.S. 316, 323, 106 S.Ct. 2543, 91 L.Ed. 2d 265 (1986).

In addition, it is well established that a moving party discharges this burden by showing that there is an absence of evidence to support the non-moving party's case, Celotex Corp. v. Catrett, Id.

In Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 106 S.Ct. 2505, 2510, 91 L.Ed. 2d 202 (1986), this court held that there is a genuine for trial if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." It is respectfully submitted that

the Circuit Court of Appeals has entered a decision which is in conflict with other United States Court of Appeal cases as well as Supreme Court cases and has departed from the accepted and usual course of judicial proceedings.

It is respectfully submitted that there was evidence in the record presented by the Petitioner, MICHAEL GRZELAK, such a reasonable jury could return a verdict in favor of the Petitioner and that the Respondent has failed to meet its burden that there were no genuine issues of material fact.

It is respectfully that the Petitioner presented pleadings and documents which establish several issues of material fact, to wit:

1) The Petitioner presented evidence in the form of exhibits to the Amended Complaint reflecting coercion and/or

fraudulent inducement in entering a settlement agreement with the Respondent. In support of these allegations the Petitioner presented the following documents: a) incident report from New Port Richey Police Department; b) Decision from A.P.W.U.; and, c) Routing slip dated September 18, 1992.

2) The Petitioner presented evidence that there is a lack of mutual meeting of the minds by the parties regarding the terms of the Settlement Agreement dated September 19, 1992. In support of these allegations, the Petitioner presented the following documents: a) Letter to the Petitioner from the Respondent dated December 7, 1992; b) Letter to the Respondent from the Petitioner dated December 14, 1992; and, c) Letter to the Petitioner from the Respondent dated December 22, 1992.

3. The Petitioner presented evidence that the Respondent breached the terms of the Settlement Agreement dated September 19, 1992. In support of these allegations the Petitioner presented the following documents: a) Letter from Respondent to Petitioner dated September 18, 1992 stating "please sign and return as soon as possible so I can start your back pay claim."; b) Letter dated December 14, 1992 from Petitioner's counsel to Respondent which contained the following:

> Please be advised that pursuant to the Settlement Agreement executed by Mr. Grzelak, the complainant will be compensated for lost time.
>
> It is our client's understanding that he would be paid for all lost time, including the administrative leave. Our

client was likewise informed by Ms. Angie Ferguson that the administrative leave would be paid.

It is respectfully submitted that the Petitioner presented sufficient evidence in the record such that a reasonable jury could return a verdict in favor of the Petitioner. The Petitioner was foreclosed from proceeding to trial as a result of the entry of the Summary Judgment.

In Stanley Industries, Inc. v. W.W. Barr & Co., Inc., 784 F. Supp 1570 (S.D. Fla. 1992) the court held that if the record presents factual issues the court must not decide them; it must deny the motion and proceed to trial.

The Court stated as follows:

Summary judgment may be inappropriate even where the

parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts; Lighting Fixture & Elec. Supply Co. v. Continental Insurance Co., 420 F.2d. 1211, 1213 (5th Cir.1969). If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment. Impossible Electronics Techniques, Inc. v. Wackenhut Protective Systems, Inc., 669 F.2d. 1026 (5th Cir.1982).

It is respectfully submitted that the decision by the District Court and Circuit Court is in conflict with the decisions cited herein and that the court in granting a summary judgment in spite of the

pleadings and documents filed on record departed from the accepted and usual course of judicial proceedings.

Based upon the foregoing, the Petitioner petitions this Honorable Court for a writ of certiorari.

APPENDIX

1. Opinion/Order Circuit Court of Appeals
2. Order of District Court
3. Amended Complaint
4. Case Management Order

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 96-2451

Non-Argument Calendar

District Court No. 94-1522-CIV-T-23A

MICHAEL E. GRZELAK,

Plaintiff-Appellant,

versus

U.S. POSTAL SERVICE DESIGNEE,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

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Before HATCHETT, Chief Judge, EDMONDSON and DUBINA, Circuit Judges.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and

briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the Judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT plaintiff-appellant pay to the defendant-appellee, the costs on appeal to be taxed by the Clerk of Court.

Entered: August 11, 1997

For the Court: Miguel J. Cortez, Clerk

By: s/_____

Deputy Clerk

ISSUED AS MANDATE: 11/12/97

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

MICHAEL F. GRZELAK,

Plaintiff,

vs. Case No. 94-1522-CIV-T-23A

UNITED STATES POSTAL SERVICE DESIGNEE,

Defendant.

_____/

O R D E R

Before the Court is the defendant's motion to dismiss or for summary judgment (Doc. 23). The uncontroverted facts in the record establish that the plaintiff failed to exhaust his administrative remedies and that he voluntarily settled his claims against the defendant. Accordingly, for the reasons set forth in the defendant's motion and supporting memorandum, the motion for summary judgment is GRANTED. Judgment shall be entered in favor of the

defendant and against the plaintiff. All other pending motions are DENIED as moot.

ORDERED in Tampa, Florida, on March 29, 1996.

S/_____

STEVEN D. MERRYDAY

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

MICHAEL E. GRZELAK

Plaintiff(s)

v. Case No. 94-1522-Civ-T-23-A

U.S. POSTAL SERVICE DESIGNEE

Defendant(s)

_____/

CASE MANAGEMENT AND SCHEDULING ORDER

This cause came on for consideratioan concerning completion of discovery and the scheduling of pre-trial procedures and trial, and the Court having considered the positions of the parties, it is

ORDERED:

1. Parties are directed to meet the agreed upon terms and time limits in the parties' Case Management Report, except as noted below:

2. Parties are further directed to meet the pretrial disclosure requirements and deadlines in Fed.R.Civ. P. 26(a)(3) and to timely adhere to all requirements in Local Rule 3.06 concerning Final Pretrial Procedures.

3. Motions to amend any pleading or a motion for continuance of any pretrial conference hearing, or trial filed after issuance of this Case Management and Scheduling Order are disfavored. (See Local Rule 3.05(c)(2)(E) and Local Rule 3.05(c)(3)(D).

4. A pre-trial conference will be held on April 8, 1996 at 9:30 a.m. before the Honorable Magistrate Judge ___ - Unassigned Magistrate -- in Suite 201.

5. This case is set for non-jury trial during the week(s) of June 3, 10, and 17. 1996. The parties estimate the time required to try this matter is 24 hours.

6. In order that the intended purposes of the pre-trial procedure are accomplished, all meetings of counsel, including the pre-trial conference, shall be attended by counsel who will participate in the trial of the case and is vested with full authority to make and solicit disclosures and agreements touching all matters pertaining to the trial.

DONE AND ORDERED this 2nd day of May, 1995.

S/_____

COURTROOM DEPUTY FOR

U.S. DISTRICT JUDGE STEVEN D. MERRYDAY

Distribution:

-Original in Court file

-Copy to counsel and unrepresented parties

-Magistrate Judge

-Becky Kline

-Blanca Ropes

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

MICHAEL F. GRZELAK,

Plaintiff,

v. Case No. 94-1522-CIV-T-23A

U.S. POSTAL SERVICE DESIGNEE,

Defendant,

_____/

AMENDED COMPLAINT

Comes now Plaintiff, Michael F. Grzelak, representing himself and for the relief sought below sets out the following:

1. That the Postal Service discriminated against Plaintiff's age 9-13-1923.

2. That the Postal Service harassed Plaintiff for years.

3. That the Postal Service had the Police remove Plaintiff from the Post Office preventing him from doing his job.

4. That the Postal Service has Plaintiff so frightened that they tricked Plaintiff into an involuntary retirement.

5. That the Postal Service Designee coerced Plaintiff into signing a contract saying to Plaintiff that if he retired he would be compensated.

6. That the Postal Service Designee violated that same contract.

RELIEF SOUGHT

1. That Plaintiff be reinstated back to Plaintiff's bid job.

2. Plaintiff be awarded back pay.

3. Plaintiff be awarded all benefits and all losses to date.

4. Plaintiff not to be harassed.

5. Plaintiff requests amended complaint to contain five million dollars for all compensatory damages and punitive damages, also to contain interest and costs, and to such further and different

relief to which he may be entitled.

Respectfully submitted,

s/ Michael F. Grzelak

MICHAEL F. GRZELAK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: Roberta M. Bahnsen, U.S. Attorney's Office, Middle District of Florida, 500 Zack Street, Room 410, Tampa, Florida 33602 and Gary J. Takacs, Esquire, 4830 Kennedy Boulevard West, One Urban Centre, Suite 147, Tampa, Florida 33609 on this 31ST day of February, 1998.

Michael E. Grzelak
6340 Spoonbill Drive
New Port Richey, FL
34652-2028